



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 9, 1998

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR98-0394

Dear Mr. Casas:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112486.

The City of San Antonio (the "city") received a request for "the construction contract between the City of San Antonio and Quick & Evans Construction Co.; St. Hedwig Drainage Project No. 1148." The requestor also asked for any "relevant attachments" to the contract. You submitted to this office representative samples of information that is responsive to the request.¹ You assert that the information at issue is protected from disclosure by section 552.103(a) of the Government Code.

We note initially that the information submitted to this office includes city ordinances. None of the Open Record Act's exceptions to disclosure may be used to bar public access to city ordinances. Open Records Decision No. 551 (1990) at 2-3 ("it is difficult to conceive of a more open record" than a city ordinance). We also note that if any of the other submitted documents were disclosed in public meetings, these also are public documents that may not be withheld from disclosure. Open Records Decision No. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records").

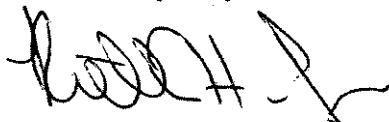
¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We will address your section 552.103(a) argument as to the remaining records at issue. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You submitted to this office information showing that the owner of commercial property in San Antonio alleges that the city, in connection with the St. Hedwig drainage project, deposited hazardous material on the property. The owner has retained an attorney, who indicates that phase I and II environmental assessments have been completed and that a remedial action plan concerning clean-up of the property is being prepared for submission to the Texas Natural Resource Conservation Commission. The owner alleges that state and federal law make the city a responsible party for remediation purposes.

Based upon the information provided by the city, you have shown that litigation is reasonably anticipated. Our review of the documents at issue shows that these records are related to the anticipated litigation. Thus, you may withhold these records from disclosure. In making this determination, though, we assume that the opposing party to the anticipated litigation has not seen or had access to the records at issue. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 112486

Enclosures: Submitted documents

cc: Mr. Keith B. Miller
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San Antonio, Texas 78209-1212
(w/o enclosures)